

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
Vonage Holdings Corp. Petition for	)	WC Docket No. 03-211
Declaratory Ruling Concerning an Order of	)	
the Minnesota Public Utilities Commission	)	DA 03-2952
	)	

REPLY COMMENTS OF GVNW CONSULTING, INC.

GVNW Consulting, Inc. (GVNW) respectfully submits the following reply comments in response to the Federal Communications Commission's (FCC or Commission) Public Notice released September 26, 2003. GVNW is a management consulting company that represents rural exchange carriers.

In this Public Notice, the FCC requested comment on the September 22, 2003 Petition for Declaratory Ruling filed by Vonage Holdings Corporation (Vonage). In its Petition, Vonage requests that the FCC preempt an order of the Minnesota Public Utilities Commission requiring Vonage to comply with state laws related to the provision of telecommunications service.

The purpose of these reply comments is to recommend to the FCC that it should continue to pursue technologically neutral regulatory policies. In order to achieve this objective, the FCC should deny Vonage's petition, and declare that its Voice over Internet Protocol (VoIP) service should be classified as a telecommunications service.

## REVIEW OF FILED COMMENTS

The comments filed by parties on or around the due date may be divided into two basic groups. The first group of commenters assert that the Vonage petition should not be granted and recommend that the FCC instead address VoIP issues in a more generic or comprehensive proceeding. The second group contends that the requested relief should be provided. This set of GVNW reply comments is consistent with the first group in recommending that the Commission deny the Vonage petition. We do so for the following reasons.

## A FUNCTIONAL APPROACH IS WARRANTED UNDER THE ACT

The FCC submitted into the public record at paragraph 86 of its 1998 Report to Congress that the classification of a service under the 1996 Act depends on “the functional nature of the end-user offering.” We submit that the proper approach to classifying a service continues to be based on what it does and should not be based solely on the type of facilities provisioned.

The comments of the National Telecommunications Cooperative Association (NTCA) are on point in stating that: “A telecommunications service is a telecommunications service regardless of whether it is provided using the PSTN, the Internet, wireless, cable, satellite or some other infrastructure such as VOIP.”<sup>1</sup>

If the FCC opts to classify providers of voice service differently based on technology, we submit that this would be discriminatory and contrary to its own position as stated in the record.

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<sup>1</sup> NTCA initial comments, page 3.

## VONAGE'S OWN CLAIMS INDICATE ITS SERVICE IS TELECOMMUNICATIONS

If one visits the Vonage website, the service is advertised as “an all-inclusive home phone service that replaces your current phone company. This is like the home phone service you have today – only better.”

We contend that the Minnesota PUC summarizes this portion of the issue most succinctly in its comments at page 4: “If Vonage is not a phone company, then why is it allowed to market itself as such.”

## THE FCC CANNOT AFFORD TO MINIMIZE PUBLIC SAFETY AND OTHER KEY PUBLIC POLICY CONCERNS

In its quest for unfettered competitive entry, we submit that the Commission should not ignore issues such as the provision of 911 services. In its filing, Time Warner Telecom states at page 4 that “contradictory approaches at the state level increase regulatory uncertainty and chill investment in innovation.” We submit that Time Warner is ignoring the needs of consumers. If the innovation referenced here is evidenced in the Vonage terms of service that indicate that 911 calls will not be completed, then perhaps the FCC should factor into its decision criteria a demonstration of its continuing commitment to public safety. As noted in the CWA comments at page 13, Vonage never contacted the Minnesota PUC, the Minnesota DOC, 911 Board, or any other state government agency to discuss its routing of 911 calls. As CWA further states, “Vonage wants to have it both ways - the rights of a telecommunications carrier without the obligations.”

Additionally, the issues surrounding Communications Assistance for Law Enforcement Act of 1994 (CALEA) are of a national security nature. The FCC would be well served to carefully evaluate such equally important public policy matters in an overall review of what direction it will take with regard to VoIP. This issue is summarized in the comments of the National Association of State Utility Consumer Advocates (NASUCA): “Carriers must be CALEA-compliant in order to assist law enforcement with their duties. The goals of CALEA are to protect public safety and ensure national security. These goals are especially important today because of national security risks. The Commission should investigate whether VoIP meets the CALEA standards.”

## CONCLUSION

Chairman Powell himself provides a compelling argument for the approach we recommend for the Commission. In a statement in April, 2002, the Chairman states in part:

Sound regulatory policy should, where appropriate, harmonize regulatory rights and obligations that are attached to the provision of similarly-situated services across technological platforms.<sup>2</sup>

Respectfully submitted

Submitted via FCC ECFS system

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<sup>2</sup> Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the Broadband Technology Summit, United States Chamber of Commerce, Washington, D.C. (April 30, 2002).